

CCASE:  
SOL (MSHA) v. BEECHGROVE PROCESSING  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
5203 Leesburg Pike  
Falls Church, Virginia 22041

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

v.

BEECHGROVE PROCESSING CO.,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 90-120  
A.C. No. 40-02368-03527

Beechgrove Prep. Plant

DECISION

Appearances: Joseph B. Lockett, Esq., Office of  
the Solicitor, U.S. Department of  
Labor, Nashville, TN, for the  
Petitioner;  
Martin J. Cunningham, III, Esq.,  
London, Kentucky, for the  
Respondent.

Before: Judge Fauver

The Secretary of Labor seeks civil penalties for alleged  
violations of safety standards, under the Federal Mine Safety and  
Health Act of 1977, 30 U.S.C. 801 et seq.

Having considered the hearing evidence and the record as a  
whole, I find that a preponderance of the substantial, reliable,  
and probative evidence establishes the following Findings of Fact  
and further findings in the Discussion below:

FINDINGS OF FACT

1. Respondent operates a coal preparation plant, known as  
Beechgrove Preparation Plant, where it processes coal for sale or  
use in interstate commerce. It employs about 17 employees and  
processes about 2,000 tons of coal per day.  
Citation 3174032

2. On April 26, 1990, Federal Mine Inspector Don McDaniel,  
an electrical inspector, inspected the plant and observed  
accumulations of float coal dust in a two-storey building into  
which coal is dumped before it is conveyed to the cleaning plant.  
He observed float coal dust in the air, on electrical boxes, on

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belt frames, and on the walls. The accumulations were as much as a quarter-inch thick.

Citation 3174033

3. On April 26, 1990, Inspector McDaniel inspected a building used to store materials and to grease equipment. He observed 50 to 75 bales of hay, an air compressor which operated a grease gun, and about 20 gallons of grease spillage on the floor and walls. He also observed an accumulation of about one gallon of grease on the air compressor equipment. He observed that, although the floor was wet, the float coal dust was dry.

Citation 317034

4. On April 26, 1990, Inspector McDaniel observed a fuel storage tank near the preparation plant. It held 150 to 200 gallons of kerosene, and was about half full. A fire extinguisher near the fuel tank had the safety pin pulled out and the discharge lever pushed in, indicating that the fire extinguisher had been discharged.

Citation 3174035

5. On April 26, 1990, Inspector McDaniel observed that the V-belt and pulleys on the No. 1 raw coal belt were not properly guarded. The guard provided was secure at the top, but two bolts were missing from the bottom, and the bottom of the guard had swung out three inches, exposing the moving parts.

#### DISCUSSION WITH FURTHER FINDINGS

Citation 3174032

The float coal dust accumulations found by the inspector were in a building in which there were various possible ignition sources, e.g., rollers on belt conveyors, bearings, electrical boxes, and energized electrical wires. Float coal dust presents a serious hazard of an explosion or propagation of fire. The cited condition presented a reasonable likelihood of resulting in serious injury, and therefore was a significant and substantial violation of 30 C.F.R. 77.202. (Footnote 1) See my decision in Consolidation Coal Company, 4 FMSHRC 748-752 (1991).

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The fact that the floor was wet did not remove the danger, because float coal dust will float on a wet or damp surface and still remain capable of propagating an explosion or fire. The condition was obvious and should have been detected and corrected before the inspection. The facts thus show moderate negligence.

Citation 3174033

The accumulations of grease presented a serious fire hazard. The flammability level of the grease was not high. Respondent states that it was not higher than hay, paper or wood. But it could propagate a fire and, with the presence of 50 to 75 bales of hay in the same enclosed area, could contribute to a major fire. The condition presented a reasonable likelihood of injury and was therefore a significant and substantial violation of 30 C.F.R. 77.1104. (Footnote 2) The condition was obvious and should have been detected and corrected before the inspection. The facts thus show moderate negligence.

Citation 3174034

The fire extinguisher near the kerosene fuel tank showed clear physical evidence of being discharged. The safety pin had been pulled and the discharge lever had been pushed in. This condition warranted a finding by the inspector that the fire extinguisher had been discharged. If the operator wanted to dispute this finding at the time the inspector issued the citation, it had the opportunity to demonstrate to the inspector that the fire extinguisher was operative. Failing such a demonstration by the operator, the facts sustain the inspector's finding that the extinguisher was in violation of 30 C.F.R. 77.1110, which requires that "Firefighting equipment shall be continuously maintained in a usable and operative condition. \* \* \*" Also, maintaining a fire extinguisher in a physical condition that indicates that it has been discharged would not comply with the standard. Such a condition could easily mislead a firefighter into going to a more distant fire extinguisher to fight a fire. Reasonable and substantial compliance with the safety standard requires that fire extinguishers be maintained in proper condition with the safety pin in place and the discharge lever in the non-discharged position.

The cited condition presented a reasonable likelihood of contributing to a serious injury, and therefore constituted a

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significant and substantial violation.

The condition was obvious and should have been detected and corrected before the inspection. The facts thus show moderate negligence.

Citation 3174035

The guard for the V-belt and pulley on the belt head drive was missing bolts on the bottom and had swung out about three inches. The guard was about four feet from the walking surface, and on a walkway. This condition presented a serious hazard of someone coming into contact with moving machinery parts and sustaining a serious injury. If someone fell near the guard opening, he or she could accidentally move a hand through the opening while trying to break the fall. The facts showed a significant and substantial violation of 30 C.F.R. 77.400(a). (Footnote 3)

The condition was obvious and should have been detected and corrected before the inspection. The facts show moderate negligence.

Considering all the criteria for civil penalties in 110(i) of the Act, I find that the following civil penalties are appropriate:

Citation	Civil Penalty
3174032	\$63
3174033	\$63
3174034	\$63
3174035	\$63

CONCLUSIONS OF LAW

1. The judge has jurisdiction in this proceeding.
2. Respondent violated 30 C.F.R. 77.202 as alleged in Citation 3174032.
3. Respondent violated 30 C.F.R. 77.1104 as alleged in Citation 3174033.

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4. Respondent violated 30 C.F.R. 77.1110 as alleged in Citation 3174034.

5. Respondent violated 30 C.F.R. 77.400 as alleged in Citation 3174035.

ORDER

WHEREFORE IT IS ORDERED that:

1. The above citations are AFFIRMED.
2. Respondent shall pay the above-assessed civil penalties of \$252 within 30 days of the date of this decision.

William Fauver  
Administrative Law Judge

1. 30 C.F.R. 77.202 provides:  
"Dust Accumulations in surface installation. Coal dust in the air of, or in, or on the surfaces of, structures, enclosures, or other facilities shall not be allowed to exist or accumulate in dangerous amounts."
2. 30 C.F.R. 77.1104 provides:  
"Accumulation of combustible materials. Combustible materials, grease, lubricants, paints, or flammable liquids shall not be allowed to accumulate where they can create a fire hazard."
3. 30 C.F.R. 77.400(a) provides:  
"Mechanical equipment guards. (a) Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons shall be guarded."